

AMENDED IN ASSEMBLY APRIL 16, 2001
AMENDED IN ASSEMBLY MARCH 26, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 576

Introduced by Assembly Member Cogdill

February 21, 2001

An act to amend Sections 11379.6, 11379.7, 11383, and 11644 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 576, as amended, Cogdill. Controlled substances: Unlawful manufacture.

(1) Existing law makes it a felony punishable by 3, 5, or 7 years in state prison and by a fine not exceeding \$50,000 to unlawfully manufacture any controlled substance.

This bill would impose this same penalty on any person who engages in the unlawful extraction of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts and isomers. The bill would also provide that if a fire occurs that can be shown, beyond a reasonable doubt, to have been caused by the unlawful manufacture of a controlled substance, any person 18 years of age or older who engaged in that unlawful manufacture or extraction process and who knew or should have known that the process causing the fire was either unsafe or illegal shall ~~by~~ *be* punished by an additional 2 years in the state prison. By creating new crimes and enhancements, this bill would impose a state-mandated local program on local governments.

(2) Existing law provides that any person convicted of unlawfully manufacturing, or possessing specified precursors with the intent to manufacture, methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present, shall be punished by an additional 2 years in the state prison.

This bill would increase the penalty for the above offense to 5 years in the state prison.

(3) Existing law provides, with specified exceptions, that it is a felony for any person, with intent to manufacture methamphetamine, to possess ephedrine or pseudoephedrine *or a substance containing ephedrine or pseudoephedrine*, or other specified chemicals.

This bill would instead make it a felony for any person to possess more than one pound of a substance that ~~the person knows to contain~~ contains ephedrine or pseudoephedrine. The bill would include persons authorized by law to sell those substances within the provision's exception and would also make a clarifying change. By changing the elements of an existing crime, this bill would impose a state-mandated local program upon local governments.

(4) Existing law requires the Crime Prevention Center to increase public awareness in areas such as the health dangers created by clandestine laboratories and the controlled substances they produce, including how to identify and report them, and the unusual effects and dangers of synthetic substances such as analogs of fentanyl, MPPP, phencyclidine, and methamphetamines.

This bill would make a technical, nonsubstantive change to this provision.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11379.6 of the Health and Safety Code
2 is amended to read:



1 11379.6. (a) Except as otherwise provided by law, every
2 person who manufactures, compounds, converts, produces,
3 derives, processes, or prepares, either directly or indirectly by
4 chemical extraction or independently by means of chemical
5 synthesis, any controlled substance specified in Section 11054,
6 11055, 11056, 11057, or 11058 shall be punished by imprisonment
7 in the state prison for three, five, or seven years and by a fine not
8 exceeding fifty thousand dollars (\$50,000).

9 (b) (1) Any person who engages in the unlawful extraction of
10 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts
11 and isomers shall be punished by imprisonment in the state prison
12 for three, five, or seven years and by a fine not exceeding fifty
13 thousand dollars (\$50,000).

14 (2) For the purposes of this subdivision, “extraction” shall
15 begin when the mixture containing ephedrine, pseudoephedrine,
16 or phenylpropanolamine is combined with a liquid solvent.

17 (c) (1) Except as otherwise provided by law, every person who
18 offers to perform an act that is punishable under subdivision ~~or (b)~~
19 ~~(a) or (b)~~ shall be punished by imprisonment in the state prison
20 for three, four, or five years.

21 (2) If a fire occurs that can be shown, beyond a reasonable
22 doubt, to have been caused by the unlawful manufacture of a
23 controlled substance specified in subdivision (a) or by the
24 unlawful extraction of a substance specified in subdivision (b), any
25 person 18 years of age or older who engaged in that unlawful
26 manufacture or extraction process and who knew or should have
27 known that the process causing the fire was either unsafe or illegal
28 shall be punished by an additional two years in the state prison.

29 (d) All fines collected pursuant to subdivision (a) or (b) shall
30 be transferred to the State Treasury for deposit in the Clandestine
31 Drug Lab Clean-up Account, as established by Section 5 of
32 Chapter 1295 of the Statutes of 1987. The transmission to the State
33 Treasury shall be carried out in the same manner as fines collected
34 for the state by the county.

35 SEC. 2. Section 11379.7 of the Health and Safety Code is
36 amended to read:

37 11379.7. (a) Except as provided in subdivision (b), any
38 person convicted of a violation of subdivision (a) of Section
39 11379.6 or Section 11383, or of an attempt to violate subdivision
40 (a) of Section 11379.6 or Section 11383, as those sections relate

1 to methamphetamine or phencyclidine, when the commission or
2 attempted commission of the crime occurs in a structure where any
3 child under 16 years of age is present, shall, in addition and
4 consecutive to the punishment prescribed for the felony of which
5 he or she has been convicted, be punished by an additional term of
6 five years in the state prison.

7 (b) Any person convicted of a violation of subdivision (a) of
8 Section 11379.6 or Section 11383, or of an attempt to violate
9 subdivision (a) of Section 11379.6 or Section 11383, as those
10 sections relate to methamphetamine or phencyclidine, where the
11 commission of the crime causes any child under 16 years of age to
12 suffer great bodily injury, shall, in addition and consecutive to the
13 punishment prescribed for the felony of which he or she has been
14 convicted, be punished by an additional term of five years in the
15 state prison.

16 (c) As used in this section, “structure” means any house,
17 apartment building, shop, warehouse, barn, building, vessel,
18 railroad car, cargo container, motor vehicle, housecar, trailer,
19 trailer coach, camper, mine, floating home, or other enclosed
20 structure capable of holding a child and manufacturing equipment.

21 (d) As used in this section, “great bodily injury” has the same
22 meaning as defined in Section 12022.7 of the Penal Code.

23 SEC. 3. Section 11383 of the Health and Safety Code is
24 amended to read:

25 11383. (a) Any person who possesses both methylamine and
26 phenyl-2-propanone (phenylacetone) at the same time with the
27 intent to manufacture methamphetamine, or who possesses both
28 ethylamine and phenyl-2-propanone (phenylacetone) at the same
29 time with the intent to manufacture N-ethylamphetamine, is guilty
30 of a felony and shall be punished by imprisonment in the state
31 prison for two, four, or six years.

32 (b) Any person who possesses at the same time any of the
33 following combinations, or a combination product thereof, with
34 intent to manufacture phencyclidine (PCP) or any of its analogs
35 specified in paragraph (22) of subdivision (d) of Section 11054 or
36 paragraph (3) of subdivision (e) of Section 11055 is guilty of a
37 felony and shall be punished by imprisonment in the state prison
38 for two, four, or six years:

39 (1) Piperidine and cyclohexanone.

40 (2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(c) (1) Any person who possesses more than one pound of a substance that ~~the person knows to contain~~ *contains* ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who ~~possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who~~ possesses at the same time any of the following, or a combination product thereof, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any “reducing” agent.

(2) Any person who, with intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses hydriodic acid or any product containing hydriodic acid is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(d) (1) For purposes of this section, “reducing” means a chemical reaction in which a hydrogen atom is added to an organic compound or in which an oxygen atom is removed from an organic compound.

(2) For purposes of this section, “a reducing agent” means an agent that causes reduction to occur by either donating a hydrogen

1 atom to an organic compound or by removing an oxygen atom
2 from an organic compound.

3 (e) For purposes of this section, possession of the optical,
4 positional, or geometric isomer of any of the compounds listed in
5 this section shall be deemed to be possession of the derivative
6 substance.

7 (f) For purposes of this section, possession of immediate
8 precursors sufficient for the manufacture of methylamine,
9 ethylamine, phenyl-2-propanone, piperidine, cyclohexanone,
10 pyrrolidine, morpholine, ephedrine, pseudoephedrine,
11 norpseudoephedrine, N-methylephedrine, N-ethylephedrine,
12 phenylpropanolamine, hydriodic acid, thionyl chloride, or
13 phosphorus pentachloride shall be deemed to be possession of the
14 derivative substance. Additionally, possession of essential
15 chemicals sufficient to manufacture hydriodic acid, with intent to
16 manufacture methamphetamine, shall be deemed to be possession
17 of hydriodic acid. Additionally, possession of any compound or
18 mixture containing piperidine, cyclohexanone, pyrrolidine, or
19 morpholine ephedrine, pseudoephedrine, norpseudoephedrine,
20 N-methylephedrine, N-ethylephedrine, phenylpropanolamine,
21 hydriodic acid, thionyl chloride, or phosphorus pentachloride
22 shall be deemed to be possession of the substance.

23 (g) Subdivisions (a), (b), (c), (e), and (f) do not apply to drug
24 manufacturers licensed by this state, persons authorized by
25 regulation of the Board of Pharmacy to possess those substances
26 or combinations of substances, or persons authorized by law to sell
27 those substances at retail.

28 SEC. 4. Section 11644 of the Health and Safety Code is
29 amended to read:

30 11644. To the extent moneys are available therefor, the Crime
31 Prevention Center of the Department of Justice shall prepare and
32 disseminate informational materials on the unique dangers posed
33 by clandestine laboratories and the controlled substances they
34 produce. The Crime Prevention Center shall increase public
35 awareness in areas such as the health dangers created by the
36 laboratories themselves, including how to identify and report
37 them, and the unusual effects and dangers of synthetic substances
38 including, but not limited to, analogs of fentanyl, MPPP,
39 phencyclidine, and methamphetamines.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CORRECTIONS
Text — Pages 5 and 6.

